



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Metro Recycling Company--Request for  
Reconsideration

**File:** B-233816.2

**Date:** March 2, 1989

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### **DIGEST**

1. Dismissal of protest for untimeliness is affirmed where protest that bid was improperly rejected was filed more than 10 working days after protester was notified of the rejection and provided with sufficient information to know its basis for protest.

2. Untimely protest does not present an issue of wide-spread significance to the procurement community justifying consideration on the merits where it raises the issue of whether a bid deposit in the form of a certified check should be accepted by the contracting officer even though the IFB does not list that type of instrument among the acceptable forms of payment.

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### **DECISION**

Metro Recycling Company requests reconsideration of our dismissal as untimely of its protest of the General Services Administration's (GSA) rejection of its bid as nonresponsive under invitation for bids (IFB) No. 04FBS89007TC for the purchase of surplus wastepaper from an Internal Revenue Service facility in Florence, Kentucky.

We affirm the dismissal.

The IFB required the submission of a bid deposit in the amount of \$500. The IFB stated that payment was acceptable only in the form of cash, cashier's check, official credit union check, money order, traveler's check or government check. The IFB also provided that personal or company checks would be accepted only if accompanied by a bank letter guaranteeing payment. Certified checks were not listed as one of the acceptable forms of payment.

Bid opening was on October 11, 1988. The high bid was rejected because it included a bid deposit in the form of a company check with no bank letter guaranteeing payment. Metro was the next high bidder. As its bid deposit, Metro submitted a certified company check for the required amount, without a bank letter guaranteeing payment as required by the IFB. Metro claims that prior to bid opening the contracting officer informed it that certified checks were acceptable.

On November 2, the contracting officer notified Metro that its bid had been rejected as nonresponsive because a certified check was unacceptable as a bid deposit. Metro claims that GSA was concerned about the possibility of a stop payment order being issued on the certified check. Metro filed its initial protest with our Office on December 8. We dismissed the protest as untimely on December 9.

Metro first asks us to reconsider our dismissal of its initial protest as untimely. Under our Bid Protest Regulations, a protest must be filed at our Office within 10 working days after the basis of the protest is known or should have been known by the protester. 4 C.F.R. § 21.2(a)(2) (1988). According to Metro, the 10-day period did not begin running until December 6, when the protester received a letter from the bank which issued its certified check explaining that its stop payment procedures were the same for both certified and cashier's checks. Metro solicited the letter from the bank in order to respond to GSA's apparent concern about stop payment procedures on certified checks. Metro claims that it was not until it received the letter from the bank that it knew that there was a basis for protest.

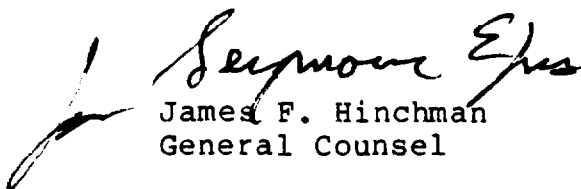
Metro's argument is not persuasive. GSA's November 2 letter, which Metro received on November 7, advised Metro that its bid was rejected as nonresponsive because it had submitted an unacceptable form of bid deposit. The fact that Metro thereafter requested information from its bank concerning the merits of its position without filing a protest with GSA or our Office does not toll the 10-day period for filing a protest challenging the rejection of its bid on this ground. See Allen-Sherman-Hoff Co., B-231552, Aug. 4, 1988, 88-2 CPD ¶ 116. Because Metro did not file its initial protest until December 8, more than 10 working days after it had notice of the basis for its protest, Metro's protest was properly dismissed as untimely.

Furthermore, to the extent that the protest constitutes a challenge to GSA's decision, which was clear from the face of the IFB, not to accept certified checks as bid deposits, the protest clearly is untimely. Under our regulations, a protest on this ground, which concerns an alleged impropriety in the solicitation, must be filed before bid opening. 4 C.F.R. § 21.2(a)(1). While Metro states that the contracting officer orally advised the firm that a certified check would be acceptable, bidders rely on oral advice from the contracting officer which is in conflict with the solicitation's requirements at their own risk. Environmental Aseptic Services Administration, B-221316, Mar. 18, 1986, 86-1 CPD ¶ 268.

Metro also asks us to consider its initial protest on the merits, even if we find it to be untimely, because it raises an issue of widespread significance to the procurement community. See 4 C.F.R. § 21.2(b). However, to prevent the timeliness requirements from becoming meaningless, the significant issue exception is strictly construed and seldom used. The exception is therefore limited to considering untimely protests only when we believe that the subject matter is of widespread importance or interest to the procurement community and involves a matter that has not been considered on the merits in previous decisions. Horizon Trading Co., Inc.; Drexel Heritage Furnishings, Inc., B-231177; B-231177.2, July 26, 1988, 88-2 CPD ¶ 86.

Metro's protest does not meet the requirements of our timeliness exception. We have previously held that a failure to submit a bid guarantee in accordance with the solicitation's terms requires rejection of the bid as nonresponsive. McLemore Pump, Inc., B-230031, Jan. 27, 1988, 88-1 CPD ¶ 83. Further, to the extent that the protest concerns the propriety of GSA's decision not to accept certified checks as bid deposits, we do not think that it raises an issue of widespread interest or importance to the procurement community. The solicitation listed numerous other acceptable forms of bid deposits, and there is no indication that excluding certified checks in any way restricted the field of competition. Moreover, the fact that Metro's bid was rejected for failure to comply with the clear terms of the solicitation is not sufficient in our view to justify applying the significant issue exception to our timeliness rules.

Our prior dismissal is affirmed.

  
James F. Hinchman  
General Counsel